DOCUMENT RESUME

ED 482 982 EA 032 886

TITLE	Conforming Amendments to the Regulations Governing Nondiscrimination on the Basis of Race, Color, National, Origin, Disability, Sex, and Age under the Civil Rights Restoration Act of 1987; Final Rule. Federal Register, Part IV: Department of Education, 34 CFR Parts 100, 104, 106, and 110.
INSTITUTION	Office for Civil Rights (ED), Washington, DC.
PUB DATE	2000-11-13
NOTE	10p.; Contains light or faded text.
AVAILABLE FROM	For full text: http://www.gpoaccess.gov/fr/index.html.
PUB TYPE	Journal Articles (080) -- Legal/Legislative/Regulatory Materials (090)
JOURNAL CIT	Federal Register; v65 n219 p68050-57 Nov 13 2000
EDRS PRICE	EDRS Price MF01/PC01 Plus Postage.
DESCRIPTORS	Age Discrimination; Civil Law; Civil Rights; Civil Rights Legislation; Disabilities; Educational Policy; Elementary Secondary Education; Equal Protection; Federal Legislation; *Federal Regulation; *Guidelines; Racial Discrimination; School Policy; Sex Discrimination
IDENTIFIERS	*Civil Rights Restoration Act 1987; Department of Education; *Office for Civil Rights

ABSTRACT

The Secretary amends the regulations governing nondiscrimination on the basis of race, color, national origin, sex, handicap, and age to conform with statutory amendments made by the Civil Rights Restoration Act of 1987 (CRRA). These amendments add a definition of "program or activity" or "program" that adopts the statutory definition of "program or activity" or "program" enacted as part of the CRRA. (AA)

Reproductions supplied by EDRS are the best that can be made
from the original document.

EA AANN 0201

ED 482 982

Federal Register

Monday,
November 13, 2000

Part IV

Department of Education

34 CFR Parts 100, 104, 106, and 110
Conforming Amendments to the Regulations Governing Nondiscrimination on the Basis of Race, Color, National Origin, Disability, Sex, and Age Under the Civil Rights Restoration Act of 1987; Final Rule

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
☒ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

BEST COPY AVAILABLE

EA033886

DEPARTMENT OF EDUCATION

34 CFR Parts 100, 104, 106, and 110

RIN 1870–AA10

Conforming Amendments to the Regulations Governing Nondiscrimination on the Basis of Race, Color, National Origin, Disability, Sex, and Age Under the Civil Rights Restoration Act of 1987

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing nondiscrimination on the basis of race, color, national origin, sex, handicap, and age to conform with statutory amendments made by the Civil Rights Restoration Act of 1987 (CRRA). These amendments add a definition of "program or activity" or "program" that adopts the statutory definition of "program or activity" or "program" enacted as part of the CRRA.

DATES: These regulations are effective December 13, 2000.

ADDRESSES: After December 13, 2000, a complete version of the revised regulations will be available on request from OCR's Customer Service Team listed in **FOR FURTHER INFORMATION CONTACT** and will be available on the Internet at the following site: http://www.ed.gov/ocr/regs

FOR FURTHER INFORMATION CONTACT: Jeanette J. Lim, U. S. Department of Education, 400 Maryland Avenue, SW., room 5036 MES, Washington, DC 20202–1100. Telephone: (202) 205–5557. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 260–0471.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to OCR's Customer Service Team at (202) 205–5557 or toll-free at 1–800–421–3481.

SUPPLEMENTARY INFORMATION: On May 5, 2000, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (65 FR 26464) proposing to amend the regulations governing nondiscrimination on the basis of race, color, national origin, sex, handicap, and age to conform with the CRRA.

We are amending these civil rights regulations to conform to provisions of the CRRA regarding the scope of coverage under civil rights statutes administered by the Department of Education (Department or ED). These statutes include Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.* (Title VI), Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*, (Title IX), Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (Section 504), and the Age Discrimination Act of 1975, 42 U.S.C. 6101, *et seq.* (Age Discrimination Act). Title VI prohibits discrimination on the basis of race, color, and national origin in all programs or activities that receive Federal financial assistance; Title IX prohibits discrimination on the basis of sex in education programs or activities that receive Federal financial assistance; Section 504 prohibits discrimination on the basis of disability in all programs or activities that receive Federal financial assistance; and the Age Discrimination Act generally prohibits discrimination on the basis of age in all programs or activities that receive Federal financial assistance.

The conforming change amends each of these regulations to add a definition of "program or activity" or "program" that adopts the statutory definition of "program or activity" or "program" enacted as part of the CRRA. We believe that adding this statutory definition to the regulatory language is the best way to avoid confusion on the part of recipients, students, parents, and other interested parties about the scope of civil rights coverage. These amendments also conform in this regard to the final Title IX regulations for 24 Federal agencies published on August 30, 2000 (65 FR 52858). That common rule incorporated the statutory definitions of "program or activity" or "program" enacted as part of the CRRA.

The Department's civil rights regulations, when originally issued and implemented, were interpreted by the Department to mean that acceptance of Federal assistance by a school resulted in broad institutional coverage. In *Grove City College* v. *Bell* 465 U.S. 555 (1984) (*Grove City College*), the Supreme Court held, in a Title IX case, that if the Department provided student financial assistance to a college, the Department had jurisdiction to ensure Title IX compliance in the specific program receiving or benefiting from the assistance, in this case, the student financial aid program, but that the Federal student financial assistance would not provide jurisdiction over the entire institution. Following the Supreme Court's decision in *Grove City College*, the Department did change its interpretation, but not the language, of these regulations to be consistent with the Court's restrictive, "program specific" definition of "program or activity" or "program." Since Title IX was patterned after Title VI, *Grove City College* significantly narrowed the scope of jurisdiction of Title VI and two other statutes based on it: the Age Discrimination Act and Section 504. See S. Rep. No. 100–64, 100th Cong., 1st Sess. 2–3, 11–16 (1987).

Then, in 1988, the CRRA was enacted to "restore the prior consistent and long-standing executive branch interpretation and broad, institution-wide application of those laws as previously administered" (20 U.S.C. 1687 note 1.) Congress enacted the CRRA in order to remedy what it perceived to be a serious narrowing by the Supreme Court of a longstanding administrative interpretation of the coverage of the regulations. At that time, the Department reinstated its broad interpretation to be consistent with the CRRA, again without changing the language of the regulations. It was and remains the Department's consistent interpretation that—with regard to the differences between the interpretation of the regulations given by the Supreme Court in *Grove City College* and the language of the CRRA—the CRRA, which took effect upon enactment, superseded the *Grove City College* decision and, therefore, the regulations must be read in conformity with the CRRA.

This interpretation reflects the understanding of Congress, as expressed in the legislative history of the CRRA, that the statutory definition of "program or activity" or "program" would take effect immediately, by its own force, without the need for Federal agencies to amend their existing regulations (S. Rep. No. 100–64 at 32). The legislative history also evidences congressional concern about the Department's immediate need to address complaints and findings of discrimination in federally assisted schools under the CRRA definition of "program or activity," citing examples to demonstrate why the CRRA was "urgently" needed (S. Rep. No. 100–64 at 11–16).

These regulatory amendments eliminate an issue recently raised by the Third Circuit Court of Appeals in *Cureton* v. *NCAA*, 198 F. 3d 107 (1999) (*Cureton*). That court determined that, because the Department did not amend its Title VI regulations after the CRRA amended Title VI, application of the Department's Title VI regulations to disparate impact discrimination claims is "program specific" (*i.e.*, limited to specific programs in an institution affected by the Federal funds), rather than institution-wide (*i.e.*, applicable to all of the operations of the institution regardless of the use of the Federal

funds). The Department disagrees with the *Cureton* decision for the reasons described in this preamble. That decision would thwart clearly expressed congressional intent. In any event, the regulatory changes address the concerns raised by the Third Circuit in that the regulations track the statutory language and apply to both disparate impact discrimination and different treatment discrimination. ("Different treatment," i.e., intentional discrimination, refers to policies or practices that treat individuals differently based on their race, color, national origin, sex, disability, or age, as applicable. That different treatment is generally barred by the civil rights statutes and regulations. "Disparate impact" refers to criteria or methods of administration that have a significant disparate effect on individuals based on race, color, national origin, sex, disability, or age, as applicable. Those criteria or practices may constitute impermissible discrimination based on legal standards that include consideration of their educational necessity.)

The statutory definition, which is now incorporated into the regulations, addresses four broad categories of recipients: (1) State or local governmental entities. (2) Colleges, universities, other postsecondary educational institutions, public systems of higher education, local educational agencies (LEAs), systems of vocational education, and other school systems. (3) Private entities, such as corporations, partnerships, and sole proprietorships, including those whose principal business is providing education. (4) Entities that are established by a combination of two or more of the first three types of entities.

Under the first part of the definition, if State and local governmental entities receive financial assistance from the Department, the "program or activity" or "program" in which discrimination is prohibited includes all of the operations of any State or local department or agency to which the Federal assistance is extended. For example, if the Department provides financial assistance to a State educational agency, all of the agency's operations are subject to the nondiscrimination requirements of the regulations. In addition, "program or activity" or "program" also includes all of the operations of the entity of a State or local government that distributes the Federal assistance to another State or local governmental agency or department and all of the operations of the State or local governmental entity to which the financial assistance is extended. For example, if the Department provides financial assistance under Title I of the Elementary and Secondary Education Act to a State educational agency and the State educational agency distributes the financial assistance to a local educational agency, then all of the operations of the State educational agency are subject to the nondiscrimination requirements of the regulations, and all of the operations of the local educational agency are covered.

Under the second part of the definition of "program or activity" or "program," if colleges, universities, other postsecondary institutions, public systems of higher education, local educational agencies, systems of vocational education, or other public or private schools or school systems receive financial assistance from the Department, all of their operations are subject to the nondiscrimination requirements of the regulations. For example, if a public school district receives funds from the Department under the Safe and Drug Free Schools and Communities Act, the entire school district is covered, not just the district's Safe and Drug Free Schools and Communities component. Additionally, for example, if a college or university receives student financial assistance from the Department, all of the operations of the college or university are covered, not solely the operations of the student financial assistance office. In addition, the legislative history of the CRRA made it clear that "all of the operations" was not limited to traditional educational operations, but was intended to include other benefits and services of the educational institution, such as faculty and student housing, campus shuttle bus services, and commercial activities, such as cafeterias and bookstores.

Under the third part of the definition, in the case of private entities not already listed under the second part of the definition, if the federally assisted entity or organization is principally engaged in the business of education (or health care, housing, social services, or parks and recreation), then the entire corporation, partnership, or other private organization or sole proprietorship is the covered "program or activity" or "program." For example, if an individual elementary or secondary school that is neither part of an LEA nor part of an assisted private "school system" receives financial assistance from the Department, the school will be covered on an institution-wide basis under this portion of the definition of "program or activity" or "program" because it is an entity principally engaged in the business of providing education. For example, if a proprietary trade school receives student financial assistance from the Department, all of its operations are covered by the nondiscrimination requirements of the regulations.

Also under the third part of the definition, if a private entity is not principally engaged in the business of education (or health care, housing, social services, or parks and recreation) and the Department extends financial assistance to the private entity "as a whole," all of the private entity's operations at all of its locations would be covered. If the Department were to extend general assistance, that is, assistance that is not designated for a particular purpose, to this type of corporation or other private entity, that would be considered financial assistance to the private entity "as a whole." In other instances in which the geographically separate facility receives assistance under the third part of this definition, the coverage would be limited to the geographically separate facility that receives the assistance.

Under the fourth part of the definition, if an entity of a type not already covered by one of the first three parts of the definition is established by two or more of the entities listed under the first three parts of the definition, then all of the operations of that new entity are covered. Under the illustrative example in the legislative history, a public school district (an entity listed under the second part of the definition) and a private corporation (an entity listed under the third part of the definition) may establish a new company, which is a public-private partnership designed to provide remediation, training, and employment to high school students who are at risk of dropping out of school. If the new company applied for and received financial assistance from the Department, then, as an entity listed under the fourth part of the definition, all of its operations would be covered, even if the assistance from the Department were only to one division or component of the new company.

The regulatory changes also modify or delete some sections of the Department regulations that have become superfluous following the CRRA enactment, to conform with the CRRA definitions of "program or activity" or "program." These regulatory changes do not change the requirements of the existing regulations. This is consistent with the approach in the Title IX common rule. As explained in the preamble to the NPRM for the Title IX common rule, that regulatory language in ED's Title IX regulations made

BEST COPY AVAILABLE

superfluous by the enactment of the CRRA was omitted in that rule (64 FR 58571).

The Department's Title IX regulations, promulgated in 1975 by the Department of Health, Education, and Welfare in 49 FR 24128 and adopted by the Department of Education upon its establishment in 1980, 45 FR 30955, defined "recipient" as an entity "to whom Federal financial assistance is extended directly or through another recipient and that operates an education program or activity that receives or benefits from such assistance." At that time, the words "or benefits from" were necessary to clarify that *all* of the operations of a university or other educational institution that receives Federal funds—not just the particular programs receiving financial assistance—are covered by Title IX's nondiscrimination requirements. As previously discussed, this interpretation was rejected by the Supreme Court in 1984 in *Grove City College*, which held that Federal student financial aid established Title IX jurisdiction only over the financial aid program, not the entire institution. However, Congress' 1988 enactment of the CRRA counteracted this decision by defining "program or activity" and "program" to provide expressly that Title IX covers all educational programs of a recipient institution. Because of this statutory change, the words "or benefits from" are no longer necessary as a regulatory matter, and we deleted them. For the same reason, we deleted the words "or benefits from" from the Section 504 regulations. These deletions do not affect the reach of Title IX or Section 504.

The Department of Education's Title VI regulations, promulgated in 1964 by the Department of Health, Education, and Welfare in 29 FR 16298 and 29 FR 16988 and in 1965 in 30 FR 16988, and adopted by the Department of Education upon its establishment in 1980, (45 FR 30918), previously included an assurance requirement for institutions in § 100.4(d)(2) that created confusion with regard to the scope of "program or activity" and "program" under Title VI. One example is the previously referenced decision in *Cureton*. The regulatory provision previously stated, in part, "The assurance * * * shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought * - * - *." We have deleted that portion of the assurance that begins with the word "unless" to avoid any further confusion. As previously stated, it was appropriate to apply the CRRA statutory definition of "program or activity" to the regulations. For the same reasons, we have deleted portions of the illustrations in § 100.5(b) and (d), since they could create similar confusion. Specifically, in § 100.5(b), we deleted the language that states that, with regard to university graduate research, training, demonstration, or other grants, the prohibition extends to the entire university "unless it satisfies the responsible Department official that practices with respect to other parts or programs of the university will not interfere, directly or indirectly, with fulfillment of the assurance required with respect to the graduate school." Similarly, in § 100.5(d), we deleted the language that states that "In construction grants the assurances required will be adapted to the nature of the activities to be conducted in the facilities for construction of which the grants have been authorized by Congress." These deletions do not affect the reach of Title VI.

In addition, we deleted references to "program" or "program or activity" in the regulations that do not refer to the CRRA broad definition of that phrase, in order to eliminate potential confusion in the use of these terms and to continue the longstanding Department interpretation of the statutes and regulations. For example, in some instances, we deleted "program" or "program or activity" and substituted "Federal financial assistance" or "aid, benefits, or services." In others, we changed "programs *and* activities" to "programs or activities" or "program or activity" to conform the regulations to the phrase used in the CRRA—when it is used in the broad manner defined in the CRRA. We did not modify the term "activity" when it appears separately from the phrase "program or activity" and is used in a manner unrelated to the CRRA phrase "program or activity."

These final regulations use the plural terms "programs" and "programs or activities" to refer generally to multiple programs or activities operated by multiple recipients. The singular terms "program" or "program or activity" are used in all other instances. We have chosen to use the singular in all of those cases because, under the CRRA and these regulations, virtually all of our recipients, such as institutions of higher education, will have only one "program" or "program or activity" encompassing all of the recipient's operations. In addition, since the use of the singular may be interpreted to encompass the plural, these regulations typically use the singular even though in certain cases we may fund a recipient that operates more than one program or activity that receives Federal financial assistance (such as when an individual recipient corporation has multiple plants, each of which is a separate program or activity). Similar regulations of other Federal agencies may use the plural form of these terms more frequently as they may tend to fund a greater number of recipients that operate more than one program or activity. Use of the singular or plural forms of these terms should not be interpreted to imply any legal difference in the intended scope of coverage.

It is important to note that these changes do not in any way alter the requirement of the CRRA that a proposed or effectuated fund termination be limited to the particular program or programs "or part thereof" that discriminates or, as appropriate, to all of the programs that are infected by the discriminatory practices. *See* S. Rep. No. 100–64, at 20, ("The [CRRA] defines 'program' in the same manner as 'program or activity,' and leaves intact the 'or part thereof' pinpointing language.").

We replaced the current definition of "program" in 34 CFR 100.13 with the definition of "program or activity" and "program." We added the definition of "program or activity" and "program" to 34 CFR 106.2. We added the definition of "program or activity" to 34 CFR 104.3 and to 34 CFR 110.3. Conforming changes to the nonregulatory guidance in Appendix B of Part 100, Appendix A of Part 104, and Appendix A of Part 106 will be published in the **Federal Register** in a separate notice. Nothing in these changes affects coverage under the Federal employment nondiscrimination statutes, including Title VII of the Civil Rights Act of 1964, Title I of the Americans with Disabilities Act, and the Age Discrimination in Employment Act.

Except for minor editorial and technical revisions, there are no differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In the NPRM, we invited comments on the proposed regulations. We did not receive any comments. However, we have reviewed the regulations, in consultation with the Department of Justice, since publication of the NPRM and have made minor editorial and technical changes.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that there probably will be no cost impacts because these final regulations merely clarify longstanding Department policy and do not change the Department's practices in addressing issues of discrimination.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (65 FR 26467).

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

After December 13, 2000, you may view a complete version of the revised regulations in text or PDF on the Internet at the following site: http://www.ed.gov/ocr/regs

To use the PDF you must have Adobe Acrobat Reader, which is available free at either of the first two sites listed in this section. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

List of Subjects

34 CFR Part 100

Administrative practice and procedure, Civil rights.

34 CFR Part 104

Civil Rights, Equal educational opportunity, Equal employment opportunity, Individuals with disabilities.

34 CFR Part 106

Education, Sex discrimination.

34 CFR Part 110

Administrative practice and procedure, Aged, Civil rights, Grant programs—education, Loan programs—education.

Dated: September 1, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends parts 100, 104, 106, and 110 of title 34 of the Code of Federal Regulations as follows:

PART 100—NONDISCRIMINATION UNDER PROGRAMS RECEIVING FEDERAL ASSISTANCE THROUGH THE DEPARTMENT OF EDUCATION EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

1. The authority citation for part 100 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1, unless otherwise noted.

§ 100.2 [Amended]

2. Section 100.2 is amended by—

A. Removing the words "program for which" and adding, in their place, "program to which" in the introductory text;

B. Removing the words "assisted programs and activities" and adding, in their place, "financial assistance" in the introductory text;

C. Removing the words "under any such program" in paragraph (c); and

D. Removing the words ", under any such program" in paragraph (d).

§ 100.3 [Amended]

3. Section 100.3(d) is amended by removing the words "the benefits of a program", and adding, in their place, the word "benefits".

§ 100.4 [Amended]

4. Section 100.4 is amended as follows—

A. Removing the words "to carry out a program" in the first sentence of paragraph (a)(1);

B. Removing the words "except a program" and adding, in their place, the words "except an application" in the first sentence of paragraph (a)(1);

C. Removing the words "for each program" and the words "in the program" in the fifth sentence of paragraph (a)(1);

D. Removing the words "*State programs*" and adding, in their place, the words "*Federal financial assistance*" in the heading of paragraph (b);

E. Removing the words "to carry out a program involving" and adding, in their place, the word "for" in the introductory text of paragraph (b); and

F. Revising paragraph (d)(2).

The revision reads as follows:

§ 100.4 Assurances required.

* * * * *

(d) * * *

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

* * * * *

5. Section 100.5 is amended as follows—

A. Revising paragraph (b); and

B. Removing the last sentence of paragraph (d).

The revision reads as follows:

§ 100.5 Illustrative application.

* * * * *

(b) In a research, training, demonstration, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university.

* * * * *

§ 100.6 [Amended]

6. Section 100.6(b) is amended by removing the words "of any program under" in the last sentence and adding, in their place, the word "in".

BEST COPY AVAILABLE

§ 100.9 [Amended]

7. Section 100.9(e) is amended by removing the word "programs" in the first sentence and adding, in its place, the words "Federal assistance statutes".

8. Section 100.13 is amended by—

A. Removing "for any program," and "under any such program" in paragraph (i);

B. Removing "for the purpose of carrying out a program" in paragraph (j);

C. Revising paragraph (g); and

D. Adding an authority citation following paragraph (g).

The revision and addition read as follows:

§ 100.13 Definitions.

* * * * *

(g) The term *program or activity* and the term *program* mean all of the operations of—

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity that is established by two or more of the entities described in paragraph (g)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 42 U.S.C. 2000d–4)

* * * * *

9. Appendix A to part 100 is amended by revising the heading of part 1 and the heading of part 2 to read as follows:

APPENDIX A TO PART 100—FEDERAL FINANCIAL ASSISTANCE TO WHICH THESE REGULATIONS APPLY

Part 1—Assistance Other Than Continuing Assistance to States

* * * * *

Part 2—Continuing Assistance to States

* * * * *

PART 104—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

10. The heading for part 104 is revised to read as set forth above.

11. The authority citation for part 104 continues to read as follows:

Authority: 20 U.S.C. 1405; 29 U.S.C. 794.

§ 104.2 [Amended]

12. Section 104.2 is amended by removing the word "each" before the words "program or activity" and adding, in its place, the word "the"; and by removing the words "or benefits from".

13. Section 104.3 is amended by redesignating paragraphs (k) and (l) as paragraphs (l) and (m), respectively; adding a new paragraph (k); and adding an authority citation following paragraph (k) to read as follows:

§ 104.3 Definitions.

* * * * *

(k) *Program or activity* means all of the operations of—

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 29 U.S.C. 794(b))

* * * * *

§ 104.4 [Amended]

14. Section 104.4 is amended by—

A. Removing the words "or benefits from" in paragraphs (a) and (b)(5);

B. Removing the words "programs or activities" wherever they appear in paragraph (b)(3), and adding, in their place, "aid, benefits, or services";

C. Removing the words "or benefiting from" in paragraph (b)(6); and

D. In paragraph (c), removing the word "*Programs*" in the heading and adding, in its place, the words "*Aid, benefits, or services*"; removing the words "from the benefits of a program" and adding, in their place, the words "from aid, benefits, or services", and removing the words "from a program" and adding, in their place, the words "from aid, benefits, or services".

§§ 104.4, 104.6, 104.12, 104.32, 104.33, 104.36 [Amended]

15. Remove the word "program" and add, in its place, the words "program or activity" in the following sections:

A. Section 104.4(b)(1)(v);

B. Section 104.4(b)(4);

C. Section 104.6(a)(3), wherever it appears;

D. Section 104.12(a), (c) introductory text, and (c)(1);

E. Section 104.32 introductory text;

F. Section 104.33(a); and

G. Section 104.36.

§ 104.5 [Amended]

16. Section 104.5(a) is amended in the first sentence by removing the words "for a program or activity" and by removing the words "the program" and adding, in their place, the words "the program or activity".

§ 104.8 [Amended]

17. Section 104.8(a) is amended by removing the words "programs and

BEST COPY AVAILABLE

activities" in the second sentence and adding, in their place, the words "program or activity".

§ 104.11 [Amended]

18. Section 104.11 is amended by—

A. Removing the words "programs assisted" and adding, in their place, the words "programs or activities assisted" in paragraph (a)(2);

B. Removing the word "programs" and revising "apprenticeship" to read "apprenticeships" in the last sentence of paragraph (a)(4); and

C. Removing the word "programs" and adding the words "those that are" before "social or recreational" in paragraph (b)(8).

Subpart C of Part 104—[Amended]

19. The heading of subpart C is amended by removing the word "Program".

§ 104.22 [Amended]

20. Section 104.22 is amended by—

A. Removing in paragraph (a) the words "*Program accessibility*" in the heading and adding, in their place, the word "*Accessibility*" and removing the words "each program or activity to which this part applies so that the program or activity, when viewed in its entirety," in the first sentence and adding, in their place, the words "its program or activity so that when each part is viewed in its entirety, it";

B. Removing the words "offer programs and activities to" in the last sentence and adding, in their place, the word "serve" in paragraph (b); and

C. Removing the word "program" and adding "in order to comply with paragraph (a) of this section" after the word "accessibility" in paragraph (e)(3).

§ 104.31 [Amended]

21. Section 104.31 is amended by removing the words "or benefit from" wherever they appear; and by removing the words "programs and activities" and adding, in their place, the words "programs or activities".

§ 104.33 [Amended]

22. Section 104.33 is amended by—

A. Removing the words "individualized education program" and adding, in their place, the words "Individualized Education Program" in paragraph (b)(2);

B. Removing the words "in or refer such person to a program other than the one that it operates" and adding, in their place, the words "or refer such a person for aid, benefits, or services other than those that it operates or provides" in the first sentence in paragraph (b)(3);

C. Removing the words "in or refers such person to a program not operated" in the second sentence of paragraph (c)(1), and adding, in their place, the words "or refers such person for aid, benefits, or services not operated or provided";

D. Removing the words "of the program" in the second sentence of paragraph (c)(1) and adding, in their place, the words "of the aid, benefits, or services";

E. Removing the words "in or refers such person to a program not operated" in paragraph (c)(2), and adding, in their place, the words "or refers such person for aid, benefits, or services not operated or provided";

F. Removing the words "from the program" in paragraph (c)(2), and adding, in their place, the words "from the aid, benefits, or services";

G. Removing the words "in the program" in paragraph (c)(2), and adding, in their place, the words "in the aid, benefits, or services";

H. Removing the words "If placement in a public or private residential program" and adding, in their place, the words "If a public or private residential placement" in paragraph (c)(3); and removing the words "the program", and adding, in their place, the words "the placement"; and

I. Removing the words "such a program" in the last sentence in paragraph (c)(4), and adding, in their place, the words "a free appropriate public education".

§ 104.35 [Amended]

23. Section 104.35(a) is amended by removing the words "program shall" and adding, in their place, the words "program or activity shall"; removing the word "a" before the word "regular"; and removing the word "program" before the word "and".

§ 104.37 [Amended]

24. Section 104.37(c)(1) is amended by removing the words "programs and activities" in the first sentence and adding, in their place, the words "aid, benefits, or services"; and by removing the words "in these activities" in the last sentence.

25. Section 104.38 is revised to read as follows:

§ 104.38 Preschool and adult education.

A recipient to which this subpart applies that provides preschool education or day care or adult education may not, on the basis of handicap, exclude qualified handicapped persons and shall take into account the needs of such persons in determining the aid, benefits or services to be provided.

§ 104.39 [Amended]

26. Section 104.39 is amended by—

A. Removing the word "programs" in the section heading;

B. Removing the words "operates a" and adding, in their place, the word "provides" in paragraph (a);

C. Removing the word "program" after the word "education" in paragraph (a);

D. Removing the words "from such program" in paragraph (a);

E. Removing the words "the recipient's program" in paragraph (a), and adding, in their place, the words "that recipient's program or activity"; and

F. Removing the words "operates special education programs shall operate such programs" in paragraph (c), and adding, in their place, the words "provides special education shall do so".

§ 104.41 [Amended]

27. Section 104.41 is amended by removing the words "programs and activities" wherever they appear in the section and adding, in their place, the words "programs or activities"; and by removing the words "or benefit from" wherever they appear in the section.

§ 104.43 [Amended]

28. Sections 104.43 is amended by—

A. Removing the words "program or activity" in paragraph (a) and adding, in their place, the words "aid, benefits, or services"; and

B. Removing the words "programs and activities" in paragraph (d), and adding, in their place, the words "program or activity".

§ 104.44 [Amended]

29. Section 104.44 is amended by—

A. Removing the words "program of" in the second sentence of paragraph (a);

B. Removing the words "in its program" in paragraph (c); and

C. Removing the words "under the education program or activity operated by the recipient" in paragraph (d)(1).

§ 104.47 [Amended]

30. Section 104.47 is amended by removing the words "programs and activities" in paragraph (a)(1), and adding, in their place, the words "aid, benefits, or services".

§ 104.51 [Amended]

31. Section 104.51 is amended by removing the words "or benefit from" wherever they appear in the section; and by removing the word "and" before the word "activities" and adding, in its place, the word "or".

§ 104.54 [Amended]

32. Section 104.54 is amended by adding the words "that provides aid,

benefits or services" after the words "supervises a program or activity".

PART 106—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

33. The heading for part 106 is revised to read as set forth above.

33a. An authority citation for part 106 is added after the table of contents to read as follows:

Authority: 20 U.S.C. 1681 *et seq.*, unless otherwise noted.

34. Section 106.2 is amended by—

A. Redesignating paragraphs (h) through (r) as paragraphs (i) through (s), respectively;

B. Adding a new paragraph (h) and adding an authority citation following paragraph (h);

C. Amending redesignated paragraph (i) to remove the words "or benefits from"; and

D. Amending redesignated paragraph (k) by removing "(k), (l), (m), or (n)" and adding, in its place, "(l), (m), (n), or (o)".

The addition reads as follows:

§ 106.2 Definitions.

* * * * *

(h) *Program or activity* and *program* means all of the operations of—

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or local government; or

(ii) The entity of a State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity that is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 20 U.S.C. 1687)

* * * * *

§ 106.4 [Amended]

35. Section 106.4 is amended by removing the words "for any education program or activity"; and by removing the word "each" and adding, in its place, the word "the" in the first sentence of paragraph (a).

§ 106.6 [Amended]

36. Section 106.6 is amended by removing the words "or benefits from" in paragraph (c).

§ 106.9 [Amended]

37. Section 106.9 is amended by removing the words "programs or activities" and adding, in their place, the words "program or activity"; and by removing the words "education programs and activities" and adding, in their place, the words "the education program or activity" in paragraph (a)(1).

§ 106.11 [Amended]

38. Section 106.11 is amended by removing the word "each" and adding, in its place, the word "the"; and by removing the words "or benefits from".

§ 106.17 [Amended]

39. Section 106.17 is amended by removing the word "programs" and by removing the word "emphasize" and adding, in its place, the word "emphasizes" in paragraph (d).

Subparts D and E of Part 106—[Amended]

40. The headings of subparts D and E are amended by removing the word "and" and adding, in its place, the word "or".

§ 106.31 [Amended]

41. Section 106.31 is amended by—

A. Removing the word "and" in the section heading and adding, in its place, the word "or";

B. Removing the words "or benefits from" in the first sentence of paragraph (a); and

C. Removing the words "*Programs not operated*" in the heading of paragraph (d), and adding, in their place, the words "*Aid, benefits or services not provided*".

§ 106.40 [Amended]

42. Section 106.40 is amended by removing the words "in the normal education program or activity" in paragraph (b)(2); and by removing the words "instructional program in the separate program" in paragraph (b)(3) and adding, in their place, the words "separate portion".

§ 106.51 [Amended]

43. Section 106.51 is amended by removing the words "or benefits from" in paragraph (a)(1); and by removing the words "social or recreational programs" and adding, in their place, the words "those that are social or recreational" in paragraph (b)(9).

PART 110—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

44. The heading for part 110 is revised to read as set forth above.

45. The authority citation for part 110 continues to read as follows:

Authority: 42 U.S.C. 6101 *et seq.*, unless otherwise noted.

§ 110.1 [Amended]

46. Remove the words "programs and activities" in the last sentence of § 110.1 and add, in their place, the words "programs or activities".

§ 110.2 [Amended]

47. The heading of § 110.2 is amended by adding the words "or activities" after the word "programs".

48. Section 110.3 is amended by adding in alphabetical order a new definition of "Program or activity" and adding an authority citation following the definition to read as follows:

§ 110.3 What definitions apply?

* * * * *

Program or activity means all of the operations of—

(a)(1) A department, agency, special purpose district, or other instrumentality of a State or local government; or

(2) The entity of a State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(b)(1) A college, university, or other postsecondary institution, or a public system of higher education; or

(2) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

BEST COPY AVAILABLE

(c)(1) An entire corporation, partnership, other private organization, or an entire sole proprietorship—

(i) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(2) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(d) Any other entity that is established by two or more of the entities described in paragraph (a), (b), or (c) of this section; any part of which is extended Federal financial assistance.

(Authority: 42 U.S.C. 6107)

* * * * *

§§ 110.16, 110.17 [Amended]

49. Remove the word "program" wherever it appears in § 110.16 and in § 110.17, and add, in its place, the words "program or activity".

§ 110.20 [Amended]

50. Section 110.20 is amended by removing the words "programs or activities are" in the first sentence and adding, in their place, the words "program or activity is".

§ 110.23 [Amended]

51. Section 110.23 is amended by removing the words "for a program or activity" and by adding the words "or activity" before the word "will" in paragraph (a).

§ 110.25 [Amended]

52. Section 110.25 is amended by removing the words "and their applicability to specific programs" in paragraph (b).

§ 110.33 [Amended]

53. Section 110.33 is amended by removing the word "program" in paragraph (a).

§ 110.35 [Amended]

54. Section 110.35(c)(2) is amended by removing the word "Federal" in the first sentence.

§ 110.37 [Amended]

55. Section 110.37(b)(2) is amended by removing the words "program or activity" and adding, in their place, "Federal financial assistance".

[FR Doc. 00–28599 Filed 11–9–00; 8:45 am]
BILLING CODE 4000–01–P

U.S. Department of Education
Office of Educational Research and Improvement (OERI)
National Library of Education (NLE)
Educational Resources Information Center (ERIC)

NOTICE

Reproduction Basis

☐ This document is covered by a signed "Reproduction Release (Blanket)" form (on file within the ERIC system), encompassing all or classes of documents from its source organization and, therefore, does not require a "Specific Document" Release form.

☒ This document is Federally-funded, or carries its own permission to reproduce, or is otherwise in the public domain and, therefore, may be reproduced by ERIC without a signed Reproduction Release form (either "Specific Document" or "Blanket").